

RECEIVED

NOV 27 1996

Reg. of Satellite Communications
Division

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Preemption of Local Zoning)	IB Docket No. 95-59
Regulation of Satellite)	
Earth Stations)	
)	
Implementation of Section 207 of the)	CS Docket No. 96-83
Telecommunications Act of 1996)	

DOCKET FILE COPY ORIGINAL

**UNITED STATES SATELLITE BROADCASTING COMPANY, INC.:
COMMENTS ON PETITIONS FOR RECONSIDERATION AND
CLARIFICATION OF AUGUST 6, 1996 ORDER**

1. United States Satellite Broadcasting Company, Inc. ("USSB"), by its attorneys, hereby files its Comments on the Petitions for Reconsideration and Clarification of August 6, 1996 filed pursuant to the Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking released by the Commission in the above-referenced docket on August 6, 1996 (the "August 6th Order").

2. USSB files these Comments to echo and support the arguments made by DIRECTV, Inc. and the Satellite Broadcasting and Communications Association of

America ("SBCA") in their Petitions for Reconsideration and Clarification filed October 4, 1996 in the above-referenced docket.¹ Those arguments are briefly reiterated here.

3. First, the Commission should reconsider its refusal to exercise exclusive jurisdiction over disputes arising pursuant to 47 C.F.R. § 1.4000 ("Section 1.4000").² As pointed out by SBCA and DIRECTV, the Commission's decision not to exercise exclusive jurisdiction contravenes one of the Commission's stated purposes: to eliminate unnecessary administrative burden and expense.³ By making the Commission the sole forum for disputes arising under Section 1.4000, the Commission would reduce the burden on consumers of DTH satellite antennas and localities in resolving disputes,⁴ and would also reduce the chances that consumers would be dissuaded from purchasing DTH satellite antennas by the specter of costly and burdensome litigation.⁵ Moreover, the Commission is explicitly authorized to exercise exclusive jurisdiction under Section 303(v) of the Communications Act, as recently amended by Section 205 of the Telecommunications Act of 1996, which provides that

¹ Hereinafter referred to, respectively, as "DIRECTV Petition" and "SBCA Petition."

² See DIRECTV Petition at 14-17 and SBCA Petition at 4-11.

³ See August 6th Order at ¶ 7. See also SBCA Petition at 6-8 and DIRECTV Petition at 16-17.

⁴ See DIRECTV Petition at 16 and SBCA Petition at 7-8 (pointing out relative expediency and lack of burdensomeness of Commission's adjudicatory process as compared to the courts').

⁵ See SBCA Petition at 8 and at 6-7 (noting that most antenna owners, when faced with the choice of hiring counsel to answer a complaint or risk a default judgment, "will forego the legal battle and give up their efforts to receive programming via DTH").

the Commission has "exclusive jurisdiction to regulate the provision of direct-to-home satellite services."⁶ If the public interest is truly the Commission's concern,⁷ then USSB believes that the public interest would be better served by the accessibility to consumers and uniformity of decisions that exclusive Commission adjudication would afford⁸ rather than by allowing local resolution of disputes as presently provided by Section 1.4000.

4. Second, the Commission should clarify Section 1.4000 by establishing two clear procedural guidelines. First, while safety and historic preservation restrictions may be enforced in accordance with their terms immediately, all other restrictions should not be enforceable until their validity has been upheld by the Commission.⁹ Second, the Commission should provide a 21-day grace period during which a DTH satellite antenna owner may come into compliance with a restriction before any fine or other penalty is imposed.¹⁰

⁶ 47 U.S.C. § 303(v).

⁷ See August 6th Order at ¶ 57, where the Commission suggests that allowing local resolution of disputes pursuant to Section 1.4000 may serve the public interest better than would exercising exclusive jurisdiction.

⁸ See SBCA Petition at 2: "By adjudicating disputes at the Commission, the Commission will reduce the burden on potential satellite consumers, eliminate inconsistent court rulings, and avoid the intolerable circumstances that occurred as a result of the Deerfield case, under which consumers could be denied the ability to have a ruling by the expert agency on this matter that the Commission has acknowledged is within its primary jurisdiction."

⁹ See SBCA Petition at 12-16 and DIRECTV Petition at 10-11.

¹⁰ See SBCA Petition at 14-16 and DIRECTV Petition at 11-14.

5. Third, Section 1.4000 should articulate Commission policy that discriminatory fees for antenna-based services are per se unreasonable, as are aesthetic regulations that impose more than de minimis costs.¹¹ As DIRECTV points out, Section 1.4000 itself does not make clear that discriminatory fees and greater than de minimis aesthetic regulations are per se unreasonable as the August 6th Order does.¹² USSB supports the suggestion by DIRECTV that the Commission make clear in its rule, as it did in the August 6th Order, that it will examine the treatment of similar objects in the community to determine if an aesthetic regulation is reasonable.¹³

6. Fourth, USSB agrees with SBCA that the Commission should clarify its definition of "impair" by defining "unreasonably" to mean "in a manner different from other appurtenances of comparable size."¹⁴ A standard whereby likes must be treated alike will minimize the potential for a regulatory morass resulting from unfettered, subjective interpretations of what is "unreasonable."

7. Finally, Section 1.4000 should state clearly that a regulation that requires the approval of any third party prior to the installation of an antenna is per se

¹¹ See DIRECTV Petition at 8-9.

¹² See August 6th Order at ¶¶ 17-18.

¹³ See DIRECTV Petition at 9.

¹⁴ SBCA Petition at 19.

unreasonable and therefore is prohibited.¹⁵ Section 1.4000 should also state clearly that permits or other forms of prior approval may not be required for antenna installations.¹⁶ The Commission itself has recognized that regulatory delay "can impede a service provider's ability to compete, since customers will ordinarily select a service less subject to uncertainty and procedural requirements."¹⁷ Section 1.4000 should, therefore, explicitly prohibit these forms of delay.

8. For the reasons set forth in these Comments, the Commission should (1) reconsider its refusal to exercise exclusive jurisdiction and decide to exercise exclusive jurisdiction and (2) clarify Section 1.4000 by stating in the rule that (a) all restrictions, other than safety and historic-preservation restrictions, are not enforceable until their validity is upheld by the Commission; (b) DTH satellite antenna owners have a 21-day grace period during which they may come into compliance with a valid restriction before any fine or other penalty is imposed; (c) discriminatory fees and aesthetic regulations that are more than de minimis are per se unreasonable; (d) "impair" encompasses a definition of "unreasonably" that means "differently from other

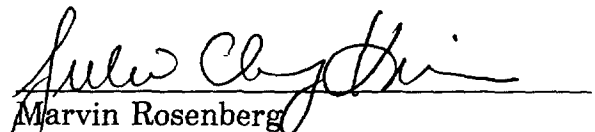
¹⁵ See DIRECTV Petition at 7-8.

¹⁶ See DIRECTV Petition at 7.

¹⁷ See August 6th Order at ¶ 17.

appurtenances of comparable size;" and (e) permits or other types of prior-approval requirements are per se unreasonable.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Julie Chung Kim", is written over a horizontal line.

Marvin Rosenberg
Edward W. Hummers, Jr.
Julie Chung Kim
HOLLAND & KNIGHT
2100 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20037-3202
202/955-3000

Counsel for United States Satellite
Broadcasting Company, Inc.

November 27, 1996

WAS1-215515.2